

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1714

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee

— v. —

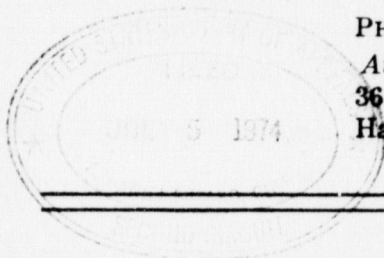
FRANCISCO ARTIERI,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX FOR THE APPELLANT

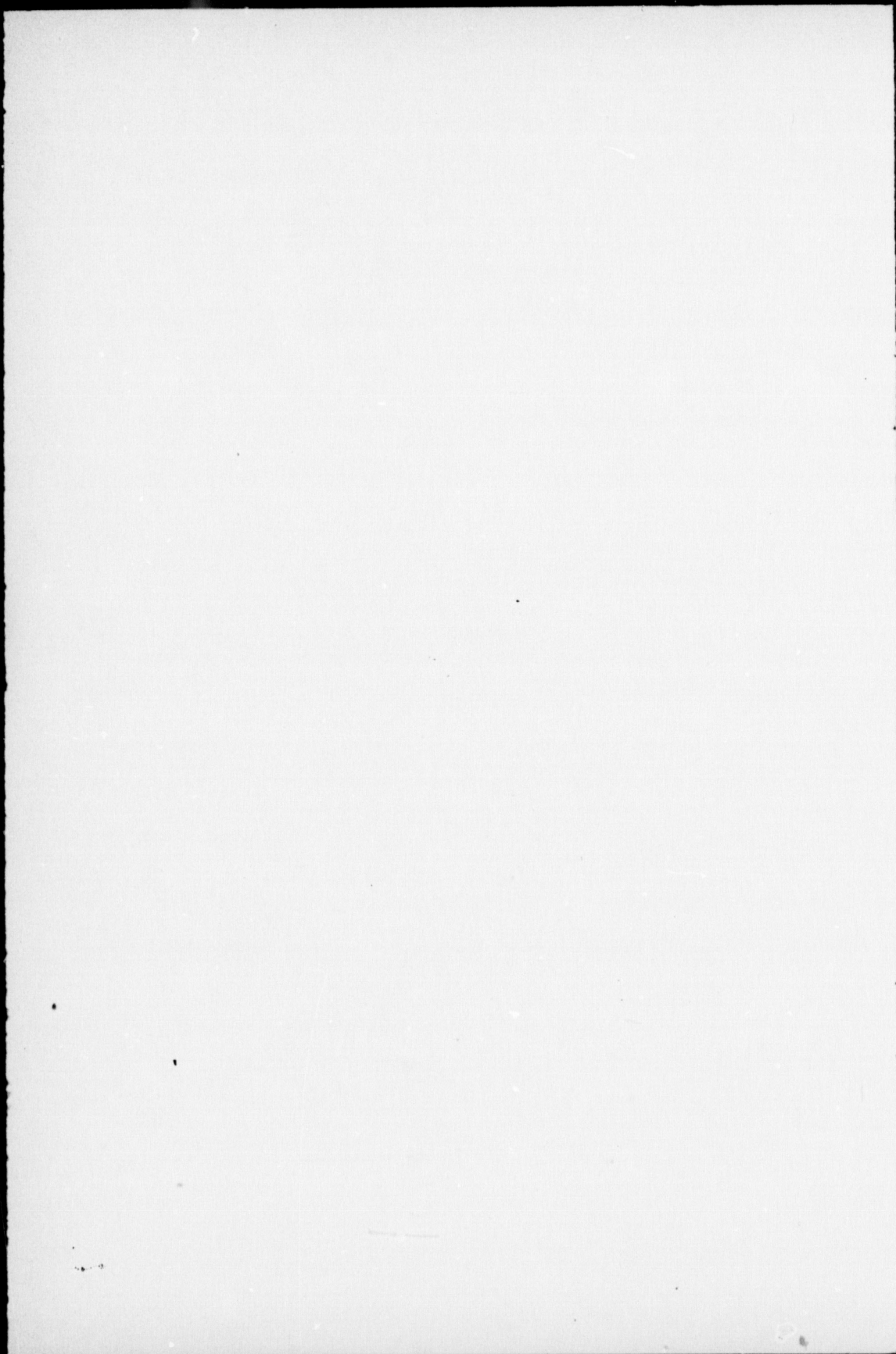
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Indictment

United States District Court

DISTRICT OF CONNECTICUT

Criminal No. H-472

UNITED STATES OF AMERICA

— v. —

FRANCISCO ARTIERI, EFRAIN GARCIA,
ISMAEL ESTRADA, GRACIANO GONZALES,
CRAWFORD COUCH, AND EDWARD ROY ARNOTT

The Grand Jury charges:

COUNT ONE

On or about the 22nd day of February, 1973, in the District of Connecticut, Francisco Artieri, Efrain Garcia, Ismael Estrada, Graciano Gonzales, Crawford Couch and Edward Roy Arnott did knowingly and intentionally possess with intent to distribute a controlled substance, that is, approximately 69 grams of heroin, in violation of Title 21, United States Code, Section 841(a) (1).

COUNT TWO

On or about the 22nd day of February, 1973, in the District of Connecticut, Francisco Artieri, Efrain Garcia, Ismael Estrada, Graciano Gonzales, Crawford Couch and Edward Roy Arnott did knowingly and intentionally distribute a controlled substance, that is, approximately .16 grams of heroin, in violation of Title 21, United States Code, Section 841(a) (1).

COUNT THREE

From on or about the 21st day of February, 1973, to on or about the 22nd day of February, 1973, in the District of Connecticut, Francisco Artieri, Efrain Garcia, Ismael Estrada, Graciano Gonzales, Crawford Couch and Edward Roy Arnott did knowingly and intentionally combine, conspire, confederate and agree together and with each other to violate Title 21, United States Code, Section 841(a)(1), in that said defendants conspired and agreed together to distribute, and possess with intent to distribute, a controlled substance, that is, heroin, in violation of Title 21, United States Code, Section 846.

OVERT ACT

In pursuance of the above conspiracy and to effect the objects thereof, the following overt acts were committed in the District of Connecticut.

1. On or about 21st day of February, 1973, Efrain Garcia, Ismael Estrada, and Edward Roy Arnott met with Special Agent Wayne Drew of the Bureau of Narcotics and Dangerous Drugs at Lindy's Bar in Willimantic, Connecticut.

2. On or about the 22nd day of February, 1973, Efrain Garcia and Crawford Couch met with Special Agent Wayne Drew of the Bureau of Narcotics and Dangerous Drugs at the Frontenac Bar in Willimantic, Connecticut.

A TRUE BILL

WILLIAM D. MOLLOY

Foreman

STEWART H. JONES
United States Attorney

RANDOLPH C. ROEDER
Assistant United States Attorney

JUDGMENT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Criminal No. H-472

UNITED STATES OF AMERICA

v.

FRANCISCO ARTIERI

THE COURT: It is the judgment of the Court that Mr. Artieri be sentenced to the custody of the Attorney General of the United States for a period of three years, to be followed by a special parole term of five years.

You should know that for any violation of that parole of which you may be found guilty the period of the parole term, which is five years, will be added to your sentence at that time and that you will not be given any credit for any time you may have served on parole before that violation.

I also inform you, despite the fact that you have retained counsel, that you have a right of appeal and to institute an appeal it is only necessary to go to the Clerk's Office and file a notice of appeal within ten days.

Mr. Smith: Your Honor, there are three counts in this case.

THE COURT: Yes.

The sentence that has just been imposed is imposed on Count One. The same sentence on Count Two and the same sentence on Count Three. Sentences on Count Two and Three to run concurrently with that on Count One.

(11)

* * *

Transcript (Relative Portions)**BY MR. ROEDER:**

Q. Tell the jury what happened when you met with Mr. Arnott?

A. I saw Eddie Arnott outside the restaurant and I indicated to him that I had been told by Linda Ravlin that Francisco Artieri wanted to see me. Arnott --

MR. FINKELSTEIN: I object to anything anybody said about Francisco Artieri, your Honor. That would be hearsay.

THE COURT: On what theory do you claim this evidence, Mr. Roeder?

MR. ROEDER: Well, your Honor, the defendant is one -- I mean Mr. Artieri is one of the defendants and we are simply trying to find out why he was there and what the negotiations were all about.

MR. FINKELSTEIN: I object as to what anybody else said about Mr. Artieri.

MR. ROEDER: Well, your Honor, one of my requested instructions concerns the actions and the declarations of co-conspirators.

THE COURT: Do you claim this is a statement by a co-conspirator?

MR. ROEDER: Yes, your Honor.

THE COURT: You propose to connect that up?

MR. ROEDER: Yes, I do.

THE COURT: All right. It's admitted.

Overruled.

MR. FINKELSTEIN: Your Honor, I'd like to object for the record. There has been no foundation laid yet for such testimony.

THE COURT: I understand. But there is a promise to connect it up.

Overruled.

(13)

* * *

THE COURT: All right.

At three P.M. now you spoke to Mr. Arnott and he said what, or you said to him what?

A. I said to Arnott I was told by Linda Ravlin that Francisco - -

MR. FINKELSTEIN: Well, if your Honor please, that is not a co-conspirator in this case. That party mentioned is no co-conspirator in this case.

THE COURT: I understand that. So what are you on your feet for? Are you objecting?

MR. FINKELSTEIN: I would object to anything that she told him, your Honor.

THE COURT: Overruled.

MR. FINKELSTEIN: May an exception be noted?

THE COURT: You don't have to note exceptions. You get exceptions.

MR. FINKELSTEIN: Fine.

(88)

* * *

BY MR. ROEDER:

Q. Okay. Was the defendant involved in this conspiracy?

MR. FINKELSTEIN: I object, your Honor.

THE COURT: Overruled.

MR. FINKELSTEIN: That's a conclusion.

THE COURT: Overruled.

THE INTERPRETER: Shall I ask the question?

THE COURT: Yes.

A. Yes.

(100)

* * *

BY MR. FINKELSTEIN:

Q. Mr. Estrada, where are you presently residing?

A. Now?

Q. Yes.

A. In the prison.

Q. In Somers, Connecticut?

A. Yes.

Q. And you were brought here from prison?

A. Yes.

Q. What are you in prison for?

A. For sale of drugs.

Q. Because of this case.

A. No.

Q. It's a different case?

A. Yes.

Q. And how long have you been in prison?

A. Six months.

(102)

* * *

BY MR. FINKELSTEIN:

Q. Was there any — did anyone in the Government tell you that any concessions would be made to you if you testified in this matter?

A. No.

Q. Who did you speak to from the Government in relation to this case before your testimony?

A. I talked to Mr. Roeder. He only told me to come here and tell the truth.

Q. You never spoke to anyone besides Mr. Roeder?

A. No.

Q. Never spoke to anyone else about this case?

A. No.

Q. Did Mr. Roeder tell you that he would make any concessions to you if you testified?

A. No.

Q. Were any concessions made to you in this case?

A. No.

Q. When you were arrested, how many counts, criminal counts, were you charged with?

A. What do you mean?

Q. When you were arrested in this case —

THE INTERPRETER: In Artieri's case, you mean?

Q. Yes, in this case. How many criminal counts were you charged with?

A. Three.

Q. And do you remember what those criminal counts were?

A. No.

Q. Were you charged with possessing heroin with intent to distribute it?

A. Yes.

Q. Were you charged with actually distributing heroin?

A. Yes.

Q. Were you charged with conspiring and combining and agreeing to violate the United States Code?

A. Yes.

Q. So you were charged with three separate counts, criminal counts?

A. Yes.

Q. Do you know the punishment for every one of these counts?

A. No.

Q. Well, just yesterday, Mr. Estrada, when you pleaded guilty and the Judge asked you what the punishment was, you told him, didn't you?

A. Yes, for one charge.

Q. All right. Now, what is the punishment for one count?

A. For the charge I pled guilty is 15 years and 25,000.

Q. For one count?

A. Yes.

Q. And what charge, what count did you plead guilty to?

A. Conspiracy.

Q. For conspiracy.

And what happened to the count charging you with possession with intent to distribute?

A. I don't know.

Q. It was dismissed, wasn't it?

A. Yes.

Q. What happened to the count charging you with distributing heroin; what happened to that count?

A. I don't know.

Q. Wasn't it also dismissed?

A. Yes.

Q. Now, did you know before you came into court yes-

terday morning that those two charges were going to be dismissed?

A. No.

Q. Your lawyer, Mr. Meisler, didn't tell you that those two charges would be dismissed?

A. I don't remember.

Q. You don't remember from yesterday up till today?

A. I don't know. I was worried. My mind is wandering, I don't know.

Q. But you remember what happened eight months ago?

A. Yes.

(108)

* * *

BY MR. FINKELSTEIN:

Q. After you were arrested did Mr. Drew speak to you, the agent?

A. No.

Q. Did anyone else from the Federal Government speak to you?

A. No.

Q. Did they speak to your attorney?

A. I don't know.

Q. Did you know yesterday that you were going to testify here today?

A. Yes.

Q. Did you know the day before yesterday?

A. Yes, I knew that I have to come to court.

Q. When did you first know that you were going to come to court to testify?

A. Yesterday.

Q. I show you this, Mr. Estrada, and I ask you if you can identify it?

A. Yes.

Q. What is it?

A. I don't know how you say it.

THE COURT: What is it, Counselor? What does it purport to be?

BY MR. FINKELSTEIN:

Q. Isn't that your statement that was given to the Government about this case?

A. Yes.

Q. Did you sign that statement?

A. Yes.

Q. And when did you sign that statement?

A. I don't remember.

Q. When is it dated?

A. I think it's June 4, 1973.

Q. It was dated June 4? Is that correct?

A. No.

Q. Are you telling us now that this was given by you yesterday?

A. No.

Q. When was that statement given by you?

A. When I was in jail.

Q. And to whom was it given?

A. To my attorney.

Q. Who witnessed that statement?

A. The agent.

Q. It was given to the agent, wasn't it?

A. He was there.

THE COURT: Who was there?

THE WITNESS: The agent.

(115)

* * *

BY MR. FINKELSTEIN:

Q. Now, you were convicted—you had a total of three narcotics convictions, did you not, outside of this case?

A. Two.

Q. Well, you had a conviction for possession of narcotics?

A. Yes.

Q. And that involved an arrest on March 12th, '73?

A. Yes.

Q. Then you had a conviction for sale of narcotics and possession of narcotics involving an arrest of April 2nd, '73?

A. Yes.

Q. And that was besides this case?

A. Yes.

(118)

* * *

BY MR. FINKELSTEIN:

Q. Now, when did you first know that in March—you were in Montville, in jail; and when did you first know that you were going to be visited by Mr. Drew?

A. The day he came. I didn't know I was going to have visitors.

Q. When did you last speak to your lawyer before that date?

A. I don't remember.

Q. Was it a day before, a couple of days before?

A. The attorney came with the agent.

Q. On the 16th?

A. Yes.

Q. Now, when you were arrested on the 12th of March, four days before, did you see your attorney on that day?

A. No.

Q. Did you see him at any time between the 12th and 16th?

A. No.

Q. And your attorney just came in as a surprise to you with two gentlemen?

A. Yes.

(156)

* * *

BY MR. FINKELSTEIN:

Q. Mr. Estrada, you testified that on February 22nd, 1973, you were a drug user?

A. (Through the Interpreter) Yes.

Q. You were a drug addict?

A. Yes.

Q. Now, was that also true on March 12, 1963, when you were arrested?

A. Yes.

Q. I'm sorry. 1973.

March 12th, 1973?

A. Yes.

Q. Now, on March 12th you were confined in jail?

A. Yes.

Q. Did you have any drugs given to you in jail?

A. No.

Q. Now, from March 12th up until March 14, the day you gave the statement, were any drugs given to you?

A. No.

Q. And how were you feeling at that time?

A. Very well.

Q. You were feeling very well?

A. Yes.

Q. After not having drugs for four days?

A. Yes.

Q. Weren't you in excruciating pain and agony at that time?

A. No.

Q. Are you receiving any drugs at the present time in Somers?

A. No.

Q. Are you on methadone?

A. No.

Q. When were you released from jail as a result of your arrest of March 12th?

A. I don't remember the date.

Q. Was it the day that you gave the statement?

A. No.

Q. Was it the next day?

A. I believe so.